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# CANADA ETHNICA

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**IX**

J.B. RUDNYCKY



## **VISIBLE and INVISIBLE**

### **Minorities in Canada**

B R I E F

Presented to the Federal  
SPECIAL COMMITTEE ON VISIBLE MINORITIES

OTTAWA

Canada

1983



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UKRAINIAN LANGUAGE ASSOCIATION  
911 Carling Ave., Ottawa, Ont.  
Canada

## INTRODUCTION

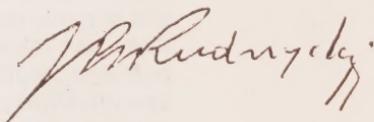
*This Brief is presented to the Special Committee on Participation of Visible Minorities in Canadian Society with due regard to its terms of reference, viz.*

- (1) to seek positive and constructive ideas and models pertaining explicitly to ameliorating relations within Canada between visible minority and other Canadians;
- (2) to identify and investigate positive examples and models of the promotion of harmonious relations between visible minority Canadians and other Canadians, particularly in institutional areas, and find ways and means of improving those relations;
- (3) to seek the views that contribute constructively and positively to the promotion of racial tolerance, understanding and harmony of concerned voluntary, community and minority groups and organizations and individuals, as well as business, professional and trade associations, labour unions, public and private institutions and relevant specialists;
- (4) within a general review to consider Federal Government policies and programs in the area of race relations;
- (5) to recommend the development of positive programs that the Committee finds necessary to promote racial understanding, tolerance and harmony in Canadian society;
- (6) to encourage the continuation of the dialogue that will be initiated, in a climate that is open and constructive.

Before going into details, however, the author of this Brief discusses the general problem of "minorities" in Canada, their visibility and invisibility in legal, constitutional, terms and makes recommendations re improvement of the situation.

By way of the introduction: the author headed the Department of Slavic Studies at the University of Manitoba in 1949-1976, was one of the ten members of the Royal Commission on Bilingualism and Biculturalism in Ottawa in 1963-1971, and lectured as Visiting Professor about the minorities and the constitutional law at the Ukrainian Free University in Munich, West Germany in 1975-1978.

Ottawa, September 4, 1983.

A handwritten signature in cursive script, appearing to read "V. Kudrytsky".

## I. PRELIMINARY

Before going into *medias res*, Gentlemen, I would like to make a few remarks on the name of your Special Committee.

First, I would like to underline the merit of our former Multiculturalism Minister, Hon. Jim Fleming, for his bold innovation - the extension of the notion of "a minority"

to designate not only the English and French exclaves in Canada, but also those segments of the Canadian population to which reference as to "minorities" was hitherto apprehensively and cautiously avoided.

As you perhaps remember, the official mandate of the Royal Commission on Bilingualism and Biculturalism of 1963 included the problem of the contribution of "other ethnic groups" not the "other ethnic minorities" or the like.

As a result of the work and recommendations of this Commission the Official Languages Act of 1969 came into being, in which the "official language minorities" are mentioned. Yet, in response to Commission's recommendations with regard to the "other ethnic groups" the multicultural policy of 1971 was introduced, in which the notion of

"ethnocultural groups" was a preferable term. So far this policy dealt with such groups, not with minorities.

Finally, the new Constitution Act 1982 with the entrenched Canadian Charter of Rights and Freedoms was adopted. In it the English and French "linguistic minority population" as well as English and French

"minority language educational rights" in Section 23 are mentioned. Moreover, a reference to the "aboriginal peoples of Canada" in Section 25 is made. However, there is no mention of either "other ethnic (ethnocultural) groups" or "minorities" other than English and French. They became "invisible Canadians" from the legal (constitutional) viewpoint. (Re Section 27 see page 10)

An innovation came in 1983 thanks to Honorable Jim Fleming. On behalf of the Government of Canada he introduced the notion of "visible minorities" into official federal vocabulary and thus your Special Committee on Visible Minorities came into being. Yet, in the Constitution Act 1982 those minorities are "invisible". Was it an incident? Was it the reason for depo sing him from his office? Or was it perhaps encroachment into the field of activity of the Department of Justice, the Solicitor General or the Canadian Human Rights Commission?

Without attempting to answer those questions I am presenting this Brief to you, Gentlemen, with the sincere conviction that your Special Committee will be not dismissed as it was the case with its initiator and actual creator.

## II. VISIBLE vs INVISIBLE MINORITIES

In defining terms of reference of your Special Committee the anthropological principle was used: a visible minority is a group of population differing by colour of skin, face features a.o. characteristics of its physical appearance. However, as it was mentioned above, this principle was not taken as the basis for the Constitution Act 1982 nor Canadian Charter of Rights and Freedoms. To be exact, this Charter foresees in its Section 15 equality rights for "every individual" but not for every group, not to mention every minority. In this basic law of the country all the actual minorities - except French/English and Amerindians - are legally (constitutionally) invisible, though anthropologically they might be visible, even supervisible. In other words Fleming's "visible minorities" - Chinese, Japanese, West Indians, etc. - are constitutionally as invisible as Ukrainians, Germans, Italians, Poles and other collective wholes of the Canadian population.

As you know, Gentlemen, the protection of minorities underwent many historic changes. 15th-17th centuries produced first evidence of the legal refuge for minorities. In 1555 the Treaty of Augsburg gave the ruler the right to protect religious groups: *cuius regio eius religio*. The Treaty of Westphalia of 1648 afforded a limited pro-

tection of minority religious rights. It was, however, not until the Congress of Vienna of 1815 that certain political rights for religious minorities were afforded. This was extended in 1878 by the Treaty of Berlin when Western powers imposed certain degrees of protection of civic and political rights for religious minorities in the Ottoman Empire.

After World War I international protection of minorities was further extended by newly created states; it referred not only to religious, but also to ethnic, national, racial and other minorities. In this connection the following might be quoted:

On January 24, 1918, the Ukrainian Central Rada passed a law regarding the national and personal autonomy of minority groups - the first of its kind in modern history. According to this law every national minority was entitled to deal with its own cultural affairs through elective bodies and was to receive the necessary funds for this purpose from the state. This positive policy with regard to national minorities, particularly the Jews, was also followed in the Ukrainian National Republic by the Directory under which there were separate ministries for the Russian, Jewish, and Polish minorities, as well as for a number of others. *Ukraine. A Concise Encyclopaedia*, Vol. 1, p. 743. University of Toronto Press, 1963/.

The United Nations Charter of 1945 did not provide for rights of minorities, nor did it the Universal Declaration of Human Rights of 1948. And it was not until the adoption of the International Co-

vention on Economic, Social and Cultural Rights in the late 1960's, that the United Nations accepted some obligatory provisions for the protection of collective rights of minorities. In the past 35 years a new device for such protection was developed, particularly in North America. It was the adoption of human rights codes administered by local and federal Human Rights Commissions. They protect both individual and group rights.

Finally, the Helsinki Act of 1975 might be mentioned. As it was evidenced by Belgrade and Madrid Conferences, that followed its adoption, this Act has a rather declaratory than a legally binding validity.

\*

From the above brief survey of the evolution of the legal protection of minorities it is clear that (1) there is no difference between the "visible" and "invisible" minorities in the international legal proceedings regarding their protection and (2) nowhere -except Canada - such protection was exercised under the aegis of the Multiculturalism Directorate instead of Human Rights Commissions, Departments of Justice and the like.

Furthermore, it is clear that (3) the individual rights are inseparably inter-

related to collective rights and the legal recognition of the former postulates such recognition for the latter; the above quoted constitutional recognition of the "national and personal autonomy of minority groups" in the free democratic Ukrainian National Republic of 1917-1921 is a fine example of just solutions in this respect.

In this connection one might argue that Canadian Charter of Rights and Freedoms includes a "multicultural" Section 27. Without over- or underestimating this section, from the legal viewpoint it is a typical directory (advisory), but not mandatory (imperative) clause. As is well known, the latter legislation must be obeyed at all times and circumstances, whereas the directory laws can be actually ignored unless they include references to a specific penalty. In my opinion, Section 27 is open for amendments and this should be on the agenda of the future Constitutional Conferences in Canada (see also Canada Ethnica I).

### III. MODELS

In formulating the six major points of the mandate of your Special Committee, Gentlemen, their architect/s/ foresaw the possibility of presentation of the relevant ideas in form of models. In view of a crass lack of the "axiomatic thinking" among the politicians of our time this method is highly laudable, especially in the present computerized world. It was W.F.Willcoughby who in his monumental work on *The Government of Modern States* (1936) wrote:

Political science, in common with other social sciences, has always suffered the grave disadvantage of loose use of terms and a failure on the part of writers to agree upon the very foundation concepts...

Having discussed in the preceding chapter the failure of the notion of "visible" and "invisible" minorities in the legal - constitutional sense I shall refer to them in the following as to the OEM = "o t h e r e t h n i c m i n o r i t i e s" having in view that the English and French exclaves as well as the Amerindian peoples are also minorities from the legal viewpoint.

Here are the models as my response to the above mentioned six points of your terms of reference  
(see page 3):

(1) Amelioration of relations:

"without a legal - constitutional recognition of the other ethnic minorities there will be no amelioration of relations"; p/c model:

$$A/r = L/c \text{ OEM } \emptyset > L/c \text{ OEM}$$

Symbols:

p/c - positive/constructive

A/r - amelioration of relations

L/c - legal/constitutional recognition

$\emptyset$  - "zero"/ non existent

$>$  - is to be changed to

OEM - other ethnic (visible and invisible minorities, see page 7 & ff.)

(2) Promotion of harmonious relations:

"through educational institutions"; p/c model:

$$PHR = E \emptyset > E 1-33\%$$

Symbols (not mentioned above):

PHR - promotion of harmonious relations

E - Educational institutions, including adult educational programmes.

(3) Views regarding tolerance:

there is an urgent need for

"change of the individual, family and group attitudes through mass media, action in voluntary organizations, churches, etc."; p/c model:

$$T/OEM = \emptyset a > p/c a (I+MM+F+VO).$$

New symbols:

T - tolerance

N - negative  
a - attitudes  
MM - mass media (press, radio, TV, etc)  
F - family  
VO - voluntary organizations  
I - individual.

(4) Federal Government policies:

besides the constitutional legalization of OEM (see above under 1) there is need for "transfer of responsibilities regarding OEM from Multiculturalism Directorate to Human Rights Commission, Department of Justice and the Solicitor General"; p/c model:

FGP = MD > CHRC // DJ // SG

New symbols:

FGP - Federal Government policies  
MD - Multiculturalism Directorate  
CHRC - Canadian Human Rights Commission  
DJ - Department of Justice  
SG - Solicitor General  
|| - parallel action ("cooperation").

(5) =(1) - (4).

(6) =(1) - (5)

*S a p i e n t i s a t !*

The above models, in my opinion, exhaust all the

six major points of your terms of reference. They refer both to the public as well as governmental ways and means how to protect "other ethnic minorities" in Canada. Yet, should you, Gentlemen, have some additional, "supplemental", questions regarding my formulas, I would be only too glad to answer them orally at your convenience.

\* \* \*

#### IV. POSTSCRIPT

For further reference regarding legal - constitutional provisions for other ethnic minorities and their languages see the same author's;

" Separate Statement" in the Report of the Royal Commission on Bilingualism and Biculturalism Vol.I, pages 155-169, Ottawa 1967.

"Formulas in Bilingualism and Biculturalism" Proceedings of the Linguistic Circle of Manitoba and North Dakota, No.6-7, University of Manitoba, 1966, pages 13-19.

"Slavic Language Minorities in Canada and Their Constitutional Protection". Slavs in Canada, Vol.3, pages 175-183. Ottawa - Edmonton 1969.

"Multiculturalism and Multilingualism in Canada" Canada Ethnica I, Ottawa 1983.

"A Multicultural Senate for Multicultural Canada". Canada Ethnica III, Ottawa 1983.

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## CANADA ETHNICA

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